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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/909,502

Applicant(s)

JOHNSON, RODNEY D.

Examiner

Jonathan Ouellette

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/12/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-22, 24-72, 75-120, 122 and 124-127 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-22, 24-72, 75-120, 122 and 124-127 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to papers filed on 12/12/2008. Claims 9, 10, 23, 73, 74, 121, and 123 have been previously cancelled; therefore, Claims 1-8, 11-22, 24-72, 75-120, 122 and 124-127 are currently pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 85, 100, and 106 are rejected under 35 U.S.C. 101 because the independent claims fails to meet the machine-or-transformation test, and therefore, fails to satisfy § 101 requirements.**
4. The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See Benson, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First, as illustrated by Benson and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. See Benson, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity (i.e. saving data in a database and displaying data from a database). See Flook, 437 U.S. at 590.

5. Therefore, because the applicable test to determine whether a claim is drawn to a patent-eligible process under § 101 is the machine-or-transformation test set forth by the Supreme Court and clarified herein, and independent Claims 85, 100, and 106 plainly fail that test, the claims are rejected.
6. **Claims 113-118 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 6 is attempting to patent computer data.**
7. First, the claimed data is clearly not a "process" under § 101 because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures "relate to structural entities and can be grouped as 'product' claims in order to contrast them with process claims." 1 D. Chisum, Patents § 1.02 (1994). The three product classes have traditionally required physical structure or material (such as: "to be used on a computer").
8. "The term machine includes every mechanical device or combination of mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." Corning v. Burden, 56 U.S. (15 How.) 252, 267 (1854). A modern definition of machine would no doubt include electronic devices which perform functions. Indeed, devices such as flip-flops and computers are referred to in computer science as sequential machines. The claimed data has no physical structure, does not *itself* perform any useful, concrete and tangible result and, thus, does not fit within the definition of a machine.

9. A "composition of matter" "covers all compositions of two or more substances and includes all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." *Shell Development Co. v. Watson*, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), *aff'd*, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958). The claimed data is not matter, but a form of energy, and therefore is not a composition of matter.
10. The Supreme Court has read the term "manufacture" in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery." *Diamond v. Chakrabarty*, 447 U.S. 303, 308, 206 USPQ 193, 196-97 (1980) (quoting *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1, 11, 8 USPQ 131, 133 (1931), which, in turn, quotes the *Century Dictionary*). Other courts have applied similar definitions. See *American Disappearing Bed Co. v. Arnaelsteen*, 182 F. 324, 325 (9th Cir. 1910), *cert. denied*, 220 U.S. 622 (1911). These definitions require physical substance, which the claimed data does not have. Congress can be presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Thus, Congress must be presumed to have been aware of the interpretation of manufacture in *American Fruit Growers* when it passed the 1952 Patent Act.
11. A manufacture is also defined as the residual class of a product. 1 Chisum, § 1.02[3] (citing W. Robinson, *The Law of Patents for Useful Inventions* 270 (1890)). A product is a tangible physical article or object, some form of matter, which data is not. That the

other two product classes, machine and composition of matter, require physical matter is evidence that a manufacture was also intended to require physical matter. Data does not fall within either of the two definitions of manufacture. Thus, data does not fall within one of the four statutory classes of § 101.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 13-19, 77-81 and 114 are rejected under 35 U.S.C. 102(b) as being

anticipated by Archive (www.archive.org, retrieved any linkage January 9, 1998).

13. As to **independent Claims 13, 77 and 114** Archive.org teaches storing data in an organized structure in a database, the data associated with a plurality of data files, including an archived original content file (file content is same – name of files changed for cataloging purposes) as collected from an electronic address over time, the electronic content associated with a content provider; from a plurality of modules, populating the database with the data files (Pg.1 and Pg. 3, storing publicly archived website materials); creating a searchable electronic index of the archived original content file stored in the database (Pg.1, enter web address – search filed; Pg. 4, Para. 4 creating a digital library); accepting a query parameter into a query engine in communication with the electronic index (Pg. 1 Select enter and submit url for query); retrieving the stored data based on the query parameter and the electronic index (Pg. 1 results from the query are returned to the user).

14. As to claims 14 and 78, Archive teaches saving the files, transferring the files to a different medium after 10 years (Pg. 5, Para. 5).
15. As to claims 15, Archive shows dates (references) in which the files were retrieved (Pg.1).
16. As to claims 16 and 79, Archive teaches the content provider as on of a web server(Pg. 3 and 4)
17. As to claims 17 and 80, Archive teaches the communication being done over the internet (www.archive.org).
18. As to claims 18 and 81, Archive teaches and indexer creating a searchable index (Pg.1, Pg. 4, para 4, a digital library.)
19. As to claims 19, Archive teaches the index as multimedia (Pg. 5, para 6).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. **Claim 1-12, 65-72, 75,113 and 119-112 and 124-125 are rejected under 35 U.S.C.**

103(a) as being unpatentable over Archive in view of Betterwhois.com

(www.betterwhois.com, Obtained from Internet Archive <www.archive.org>, date range: 11/27/1999).

22. As to **independent Claims 1, 65 and 113**, Archive teaches a system and method of a searchable electronic index of original content (file content is same – name of files changed for cataloging purposes) stored in the archived original content file; Archive teaches a searchable index of websites that have been archived (Pg. 1, www.archive.org indexed and was searched using the “enter web address”); a query engine in communication with the electronic index; a user interface in communication with the query engine for soliciting a query from a user for desired content, the desired content having a match to original content stored in the archived original content file (Pg. 1 in which user can query any web address they wish to enter into the search box); and a query result presented to the user in response to the query and the electronic index, the query result including a reference to the archived original content file and the archived Internet domain registration information (Pg. 1 the search results presented user that matched the present url searched retrieving the archived dates); a data warehouse storing a plurality of data files, including an archived original content file as collected from an electronic address at a specified time and *archived with internet domain name registration information* related to a content provider associated with the electronic address at the specified time.
23. While, Archive does teach a database populated from netnews, world wide web and downloadable software donated by alexa. Archive fails to teach the archived information also being “internet domain name registration information.”

24. However, **Betterwhois.com** teaches searching and maintaining a database (search results) of domain name registration data (Pg.2, whois search – search results saved for display).
25. Therefore, it would have been obvious to one skilled in the art to additionally archive the internet domain name information from Betterwhois.com with the tools of archive.org as there are few options for identifying who the domain owner and registrant information. Thus using the domain name registration information as part of the archived data will improve the archive. org "digital library" to make it a comprehensive collection of the website at that particular time (See KSR [127 S Ct. at 1739] "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").
26. As to claims 2 and 66, Betterwhois.com teaches allowing the user to search by names, IP host or website (Pg. 2, whois search). It would have been obvious to one skilled in the art at the time of invention to combine Betterwhois.com search options with archive.org as one skilled in the art would have recognized that applying the known technique of searching with the additional search options of Internic would have yielded predictable results of being able to archive the registration information and the web content.
27. As to claims 3 and 67 as archive.org is a search using a website it therefore teaches the user interface at a remote location.
28. As to claims 4 and 68 archive.org teaches the web pages had been query on previous dates, not real time (Pg. 1).

29. As to claims 5-8 and 69-72 Archive teaches soliciting a URL (Pg. 1 “Enter web address”).
30. As to claims 119-112 and 124-125 archive teaches a “digital library” (Pg. 4). The examiner notes in a system claim the type of information stored in the database is non-functional descriptive material. It will not affect the function of the structure of the system.
31. **Claims 20-26, 82-85 and 115 rejected are rejected under 35 U.S.C. 103(a) as being unpatentable over Betterwhois.com in view of Archive.org.**
32. As to claims 20, 82 and 115, Betterwhois.com teaches: storing content for later retrieval in a data warehouse (search results); and retrieving registration content for a plurality of web content providers from a plurality of Internet domain name registries providers and storing the retrieved registration content in the data warehouse (Pg.2, retrieving data and storing for display to user).
33. Betterwhois.com fails to expressly disclose archiving (for future search) retrieved data based on timestamp information.
34. However, archive.org discloses maintaining retrieved data based on the time (timestamp) the information was create for future search and evaluation (pg.1-5).
35. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included archiving (for future search) retrieved data based on timestamp information, as disclosed by Archive.org in the system disclosed by Betterwhois.com, for the advantage of providing a more effective method of obtaining and tracking data (See KSR [127 S Ct. at 1739] “The combination of familiar elements

according to known methods is likely to be obvious when it does no more than yield predictable results.”).

36. As to claims 21 and 83, Betterwhois.com teaches a page for retrieving the content provider content to the data warehouse (Pg. 2, results data).

37. As to claim 22, archive.org teaches maintaining content (Pgs. 1-5).

38. As to claim, 24-25, archive.org teaches an indexer for searching the store registration content (Pgs. 1-5).

39. As to claim 84, archive.org teaches accessing the searchable electronic index using a query engine (Pgs. 1-5).

40. As to claims 26 and 85, archive.org teaches the query via the website with the user being remote (Pgs. 1-5).

41. Claims 27-45 and 85-99, 116 and 126 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finseth et al. (US 6,271, 840) in view of Betterwhois.com.

42. As to claims 27, 85 and 116, Finseth teaches: a source code file having instructions for operating web browsers (C. 5 l. 38-40 receives image scare and format indicating general desired format...of the webpage); a file having an image of a browser-rendered display generated by a web browser as instructed by the instructions in the source code file; and associating the web content provider with the stored information in a database (C. 5 l. 49-50, the web page rendering process may optionally also provide a image map indicating media area or hypertext associated with the web page data as rendered by the page rendering process).

43. Finseth fails to teach having an identifier for the web content and storing ownership registration information.
44. However, Betterwhois.com teaches: storing an identifier of a web content provider in a data warehouse (Pg.2, retrieving data and storing for display to user) and for the web content provider, storing information in the data warehouse including: a record of ownership registration data; (Pg. 2, domain name information).
45. Therefore, it would have been obvious to one of skill in the art at the time of invention to combine the known elements of Betterwhois.com with Finseth to include the domain name registration information and identifier to give a more complete and thorough organized picture of what and who the website is representing (See KSR [127 S Ct. at 1739] "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").
46. As to claims 28-28 and 86-87, Finseth teaches a URL being used to identify the requested information (C. 21 35).
47. As to claims 30 and 88, Finseth teaches Compressing the data (C. 2 l. 52-56).
48. As to claims 31 and 89, Finseth teaches multimedia files (C. 5 l. 12-15).
49. As to claims 32 and 90, Finseth teaches the indexer operating on stored information (C. 4 l. 62-63).
50. As to claims 33 and 91, Finseth fails to teach a digital signature.
51. However, Internic teaches a digital signature (Pg. 27).
52. Therefore, It would have been obvious to one skilled in the art to include digital signature in the indexed information so as to give a more complete and thorough organized

picture of what and who the website is representing (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

53. As to claims 34 and 92, Finseth teaches querying the data (C. 4 l. 40-44).

54. As to claims 35 and 93, Finseth teaches operating remotely (C. 7 l. 13-15).

55. As to claims 36-37 and 94-95, Finseth teaches remote computer searching the “crawled” information (C. 7 l. 17-18).

56. As to claims 38 and 96 Finseth fails to teach content provider registering the owner information

57. However Betterwhois.com teaches User registration (Pg.2, Registered user data retrieved from Registrars).

58. Therefore, it would have been obvious to one skilled in the art to combine Internic User registration with Finseth as Betterwhois.com is a cooperative activity with the US Government in which domain registration is legally required to be maintained, therefore one skilled in the art would have been motivated to combine the known technique of Betterwhois.com registration with the methods Finseth to yield predictable results (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

59. As to claims 39-40 and 97, Finseth teaches storing instructions (C. 5 l. 25-26).

60. As to claim 42-43 and 98, Betterwhois.com teaches maintaining the modified registration information (Search results). It would have been obvious to one skilled in the art to combine Internic User registration with Finseth as Betterwhois.com is a cooperative

activity with the US Government in which domain registration is legally required to be maintained, therefore one skilled in the art would have been motivated to combine the known technique of Internic registration with the methods Finseth to yield predictable results.

61. As to claim 45, Finseth teaches protocol for archiving (crawling)(C. 5 l. 6-8).

62. As to claim 126, Finseth teaches a database (C. 7 l. 40-44) The examiner notes in a system claim the type of information stored in the database is non-functional descriptive material. It will not affect the function of the structure of the system.

63. Claims 46-57, 100-105 and 117 are rejected under 35 U.S.C. 102(e) as being anticipated by Betterwhois.com, in view of archive.org.

64. As to claims 46, 47, 100 and 117, Betterwhois.com teaches identification of ownership of a website (Pg.2, whois search).

65. Betterwhois.com fails to expressly disclose maintaining/updating data as it changes.

66. However, archive.org discloses maintaining retrieved data based on the time (timestamp) the information was create for future search and evaluation (pg.1-5).

67. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included maintaining/updating data as it changes, as disclosed by Archive.org in the system disclosed by Betterwhois.com, for the advantage of providing a more effective method of obtaining and tracking data (See KSR [127 S Ct. at 1739] "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

68. As to claim 48-49, 52-53 and 101, 103-104 Betterwhois.com teaches registering content information (Registrar information). The examiner notes that the type of format of information registered is non-functional descriptive material. The registration process would be performed the same regardless of the type or format of the information.
69. As to claims 50 and 102, 105 Betterwhois.com teaches reducing the size of the content (Pg.2, search results reduced based on search parameters).
70. As to claim 51 and 103 Betterwhois.com teaches ownership (pg.2).
71. As to claims 54-57 archive.org teaches the stored categorized information that is searchable. (Pgs. 1-5).

72. Claims 58-64, 106-112, 118 and 127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finseth (US 6, 271, 840) in view of Betterwhois.com, and further in view of archive.org.

73. As to claims 58, 106 and 118 Finseth teaches providing an identifier of a plurality of web content providers (C. 7 l. 36-37 URL's); for each of a plurality of content provider, storing searchable information in the data archive, including (C. 7 l. 40-41 results of a separate crawler search stored in database); a source code file having instructions for operating web browsers as specified by the web content provider; (C. 5 l. 36-39 receiving information such as size , format etc); a file having an image of a browser-rendered display generated by a web browser as instructed by the instructions in the source code file; (C. 5 l. 46-50 in which a browser is rendered using the size format information by the page rendering process); soliciting information from the data archive related to the searchable information and a specified time; and (C. 7 l. 35-37 ; C. 4 l 65-67) search

engine request; and presenting a report responsive to the solicited information, the report including archived information associated at least one content provider. (C 4 l. 33-35 rendering the searched page).

74. Finseth fails to teach a record of internet domain name registration data associated with the content provider; and a database, associating web content providers with the stored information and associating the stored information with a time stamp;
75. However, Betterwhois.com teaches an internet domain name registration (Pg. 2). It would have been obvious to one of skill in the art at the time of invention to combine the known elements of Betterwhois.com with Finseth to include the domain name registration information and identifier to give a more complete and thorough organized picture of what and who the website is representing and yielding predictable results (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).
76. However, both Finseth and Betterwhois.com fails to expressly disclose archiving (for future search) retrieved data based on timestamp information.
77. However, archive.org discloses maintaining retrieved data based on the time (timestamp) the information was create for future search and evaluation (pg.1-5).
78. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included archiving (for future search) retrieved data based on timestamp information, as disclosed by Archive.org in the system disclosed by Betterwhois.com, in the system disclosed by Finseth, for the advantage of providing a more effective method of obtaining and tracking data (See KSR [127 S Ct. at 1739] “The

combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

79. As to claims 59-60 and 107-108, Finseth teaches querying information. The examiner notes the type of information being queried is non-functional descriptive material. The query will be process regardless of the type of information requested.

80. As to claims 61 and 109, Finseth teaches at least one of audio, video text(C. 5 l. 5; C. 5 l. 14).

81. As to claims 62 and 110, Finseth teaches archived (crawled information)(C. 5 l. 6-7).

82. As to claims 63-64 and 111-112, Finseth teaches reporting archived information and obsolete information (C. 11 l. 5-15).

83. As to claim 127, Finseth teaches a database, (C. 7 l. 40-44). The examiner notes in a system claim the type of information stored in the database is non-functional descriptive material. It will not affect the function of the structure of the system.

Response to Arguments

84. Applicant's arguments with respect to claims 13-19, 77-81 and 114 have been considered but are not persuasive. The rejection will remain as NON-FINAL, based on the cited prior art.

85. Applicant's arguments with respect to claims 1-8, 11, 12, 20-22, 24-72, 75, 76, 82-113, 115-120, 122 and 124-127 have been considered, but are moot, based on the new grounds of rejection.

86. Applicant's arguments are addressed in the clarified/new rejections above.

Conclusion

87. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.
88. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
89. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (571) 272-4000. Information regarding the status of an application may also be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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April 30, 2009

/Jonathan Ouellette/

Primary Examiner, Art Unit 3629